

FINAL STATEMENT OF REASONS:

This action amends and adopts provisions governing Article 9, Joint Venture Program (JVP), Section 3482, 3484, 3485 and 3486 within the California Department of Corrections and Rehabilitation (Department). This action complies with the Court of Appeal opinion, *Vasquez v. State of California*, 105 Cal.App.4th 849 (2005), as implemented by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No. GIC-740832, regarding the Joint Venture Program's Wage Plan Protocol.

The JVP Administrator shall obtain from participating Joint Venture Program Employers (JVE) revised job descriptions for inmates when there is a change in job duties. The JVE is required to submit detailed job descriptions and wage plans prior to commencing business, upon creation of any new JVE job position, or upon the alteration of any existing position. If there are non-inmate employees performing the same or similar work for that particular employer, detailed job descriptions, wage rate and wage plans with documentation are required. JVEs shall certify under oath the accuracy of the job description. These regulations expand and define monitoring of comparable wages and wage plans. These regulations also specify that the JVP shall maintain a data base for inmate positions and conduct desk audits. This procedure is outlined to ensure that inmates are paid comparable wages and to notify JVEs of the procedures in the event a JVE is found to be in non-compliance.

With the implementation of these regulations, it is necessary to correct language regarding an inmate's savings account. With the adoption of language regarding comparable wages for inmates, it is necessary to increase the amount in an inmate's savings account for early withdrawal and define the meaning of a portion for early withdrawal of funds from the inmate's savings account. This will provide clarity to the inmate as to the amount and expectation of moneys withdrawn for various purposes.

Changes for enhanced clarity, including reference, grammatical corrections, and changes in punctuation are also made to meet departmental standards.

Sections 3480 through 3481 are unchanged.

3482. Joint Venture Program Contracts

Subsection 3482(a) is amended to clarify the acronym JVP. The text "Joint Venture Program" is added to clarify the meaning of JVP.

Subsections 3482(a)(1) through 3482(a)(3) are unchanged.

Subsection 3482(a)(4) is amended to ensure that inmate-employee wages will be compared to wages of non-inmate employees performing the same or similar work for that employer. This is necessary to clarify wages paid by the JVE to inmate employees. For example, if an employer has non-inmate employees performing the same or similar work as inmate-employees, inmates will be paid the same wage. If the employer does not employ non-inmate workers in the same or similar work, wages will be paid comparable to those paid for work of a similar nature in the locality of the Joint Venture business.

Subsection 3482(a)(5) is amended to identify the administrator of the JVP as responsible for monitoring wage rates. This is necessary to ensure that the responsibility is specific to the administrator of the JVP and not other entities within the Department so as to maintain consistency regarding wage rates. For example, if this consistency is not maintained regarding wage rates, the JVP would be in jeopardy of violating the comparable wage requirements of 3482(a)(4).

Subsections 3482(a)(6) through 3482(a)(12)(J) are unchanged.

Subsection 3482(a)(12)(K) is amended to include language as required by the Stipulated Injunction and Order entered by the Superior Court of San Diego County in Case No. GIC-740832, regarding the Joint Venture Program's Wage Plan Protocol. This language specifies that the JVE prepare and submit documents to the administrator of the JVP describing the jobs performed at the facilities by the inmate. The JVE will be required to provide a revised job description of the specific job when there is a twenty-five percent or more change in job duties. Additionally, if there are non-inmate employees performing the same or similar work for the JVE, a detailed job description, wage rate, and wage plan with documentation for its non-inmate workforce shall be provided to the administrator of the JVP. Finally, the accuracy of the job descriptions shall be certified under oath by the JVE. These changes are necessary to ensure that all inmate jobs are accurately identified in order that a comparable wage can be determined and paid according to the court ordered Wage Plan Protocol.

Subsections 3482(a)(12)(L) through 3482(d) are unchanged.

The authority and reference section is amended to include the Wage Plan Protocol which required the Department to amend these specific regulations.

Section 3483 is unchanged.

3484. Monitoring Comparable Wages and Wage Plans.

Subsections 3484(a) and 3484(b) are amended to specify the Joint Venture Program as the entity responsible for monitoring wage rates and wage plans for Joint Venture Employers. Language regarding unannounced on-site monitoring is necessary to comply with the Wage Plan Protocol and to determine the accuracy of the job descriptions and to assess compliance with wage plan requirements. The Court ordered Wage Plan Protocol Stipulated Agreement requires and these regulations specify that the JVP shall develop a written protocol for the monitoring visits and retain a copy of the on-site visit reports for at least five years. This is necessary for the JVP to develop and maintain records of the JVE's compliance with the Court Order. Wage data, applicable Standard Occupational Codes, and survey data from Occupational Employment Surveys for each inmate-employee's job description shall be obtained annually from the Employment Development Department; upon creation of any new JVE job position, upon alteration of any existing position or for all new JVP businesses. This is necessary as the Court ordered Wage Plan Protocol outlines the requirements for obtaining wage data from EDD.

Subsections 3484(c) through 3484(e) are adopted to specify that the JVE job descriptions and wage plans shall be reviewed annually, upon creation of any new JVE job positions, alteration of any existing positions, or upon the establishment of a new JVP business. This is necessary as the court ordered Wage Plan Protocol outlines the requirements for reviewing job descriptions and wage plans. The JVP shall maintain a database of inmate information including, the date of hire, hourly wage, hours worked and the Standard Occupational Classification. Additionally, the regulations require the JVP to conduct desk audits every ninety days of a ten percent random selection of the inmate workforce. This is necessary to review salary levels to verify comparable wage rates are being paid according to the Court ordered Wage Plan Protocol.

The authority and reference section is amended to include the Wage Plan Protocol which required the Department to amend these specific regulations.

3485. Inmate Joint Venture Program Participation

Subsections 3485(a) through 3485(i)(1) are unchanged.

Subsections 3485(i)(2) and (i)(3) are amended to increase inmate savings account balances from \$300 to \$500 to qualify for early withdrawal by terminated inmates. The qualification amount has increased due to the increase in an inmate's comparable wage amount as they are now afforded the opportunity to save more money.

This subsection is also amended to define inmate savings accounts as accounts that are intended solely for the deposit of earned wages from a JVE. Additionally, early withdrawal of an inmate's savings is changed from "a portion" to up to 50 percent of the balance from JVP wages. The purpose is to make the amount of early withdrawal specific and clear, as "a portion," which has been deleted, is vague and could have the potential to be misinterpreted.

3486. Compliance

New Section 3486 is adopted to make specific the process the JVP shall follow when a JVE is found to be in non-compliance with PC 2717.8 or the provisions of sections 3482(a)(4) and 3482(a)(12)(K). The regulations provide clear notice to JVEs as to compliance expectations and the resulting consequences for non-compliance. This language is necessary as ordered by the Wage Plan Protocol.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective, and less burdensome to affected private persons than the action proposed.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

PUBLIC COMMENTS TO ORIGINAL PROPOSED REGULATIONS:

Public Hearing: Held, December 18, 2007, at 10:30 a.m.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

No one commented during the Public Hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

No written comments were received during the public comment period.